Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
and	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-84
	)	

REPLY COMMENTS OF THE COLORADO COMMUNICATIONS AND UTILITY ALLIANCE, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF SEATTLE AND TACOMA, WASHINGTON, KING COUNTY WASHINGTON, THE JERSEY ACCESS GROUP AND THE COLORADO MUNICIPAL LEAGUE

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SUMMARY

The Colorado Communications and Utility Alliance, the Rainier Communications Commission, the Cities of Seattle and Tacoma, Washington, King County, Washington, the Jersey Access Group and the Colorado Municipal League (referred to as the "Local Governments") appreciate the opportunity to submit these Reply Comments in these important proceedings. After review of the filed Comments in both Dockets, we are convinced that there is neither a broad spectrum of competent evidence, nor clear legal authority for the Commission to adopt national rules for wireless or wireline facilities siting that preempt local and/or state authority.

As we noted in our Comments in WT Docket No. 17-79, the Commission should play the role of a facilitator, and promote deployment in a manner that respects the longstanding efforts of localities to promote broadband deployment. In these Reply Comments, the Local Governments will focus on the issues involving due process, specific references to a number of Local Governments here, shot clock issues, pre-application processes, aesthetic issues and demand for 5G technology as a basis for federal preemption – some of which have been raised in WT Docket No. 17-79 and some which have been raised in WT Docket No. 17-84.

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These Reply Comments are filed by the Colorado Communications and Utility Alliance ("CCUA"), the Rainier Communications Commission ("RCC"), the cities of Tacoma and Seattle, Washington ("Tacoma" and "Seattle"), King County, Washington ("King County"), the Jersey Access Group ("JAG") and the Colorado Municipal League ("CML") (collectively referred to as "the Local Governments"), in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry released April 21, 2017, in the above-entitled proceedings.[1]

[1] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79 (FCC 17-38); Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-84 (FCC 17-37) (referenced herein as the Wireless Docket or Wireline Docket, as appropriate).

I. INTRODUCTION

In these Reply Comments, the Local Governments will briefly respond to some of the issues that were raised by parties in their Comments in both proceedings, as well as reiterate key policy and legal position from our initial Comments in the Wireless NPRM and NOI.

II. ARGUMENT

A. The Commission Should Disregard Allegations Against Unnamed Jurisdictions. As we noted in our Reply Comments in Docket No. 16-421, industry advocates commonly support arguments seeking federal rules preempting traditional areas of local authority, based upon "evidence" comprised of allegations against unnamed local jurisdictions.[2] The Commission cannot consider any of these allegations as competent evidence. Fundamental principles of due process require that for community actions to be relied upon as evidence supporting federal rules, these communities must have notice of these allegations, and they must have a chance to comment in response.

As we predicted, numerous industry commenters violate these principles of due process. CCIA alleges actions taken by a "western city."[3] General Communications alleges that multiple jurisdictions delay the process and set unreasonable requirements, but it fails to name them.[4] In multiple places throughout T-Mobile's Comments there appear allegations against unnamed jurisdictions.[5] Southern Light LLC/Conterra Broadband, Verizon, and AT&T likewise make

[2] *In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, WT Docket No. 16-421, Local Government Reply Comments, pp. 2-3.
[3] Computer and Communications Industry Comments, Docket Nos. 17-79 and 17-84, p. 16.
[4] General Communications Comments, Docket No. 17-79, pp. 4, 9.
[5] T-Mobile Comments, Docket No. 17-79.

numerous references to unnamed jurisdictions.[6] CTIA simply cites to other commenters in the Mobilitie Petition for Declaratory Ruling proceeding which includes multiple references to unnamed communities.[7]

B. Responses to Crown Castle Comments. To its credit, Crown Castle is among the only industry commenters to not only point out that many jurisdictions are working effectively with the industry to site wireless facilities, but they actually reference the names of these communities.[8] The Local Governments here would add that while Colorado jurisdictions were not listed in Crown's Comments identifying proactive local governments, Crown has recently begun reaching out to local governments in Colorado, attending the Colorado Municipal League's annual conference in June, and it has begun meetings with individual communities to lay the groundwork for an efficient siting process. These examples of collaboration are far more common than the problems cited in these Dockets, and demonstrate that preemptory rules from the federal government are not warranted.

Problematically, Crown Castle also complains generally about alleged delays and burdensome regulations imposed by the City of Greenwood Village, Colorado.[9] Crown made the same complaints against Greenwood Village in its filing in the Mobilitie Petition for Declaratory Ruling.[10] In our Reply Comments in that proceeding, we demonstrated that Crown's allegations were false, explained the Greenwood Village processes in detail, and further noted that Crown's applications occurred a number of years ago, that it was provided alternatives to speed the

[6] Southern Light/Conterra Broadband Comments, Docket No. 17-79, pp. 12, 13, 23; Verizon Comments, Docket No. 17-79 and 17-84, p.6; AT&T Comments, Docket No. 17-79, pp. 14-18, 22.
[7] CTIA Comments, Docket No. 17-79, pp. 14, 15, 22-24.
[8] Crown Castle Comments, Docket No. 17-79, p. 6.
[9] *Id.*, at pp. 15, 21.
[10] Crown Castle Comments, WT Docket No. 16-421, pp. 16, 35.

approval process, which it rejected, and that pursuant to new state legislation in Colorado, none of the issues complained of by Crown could occur today.[11] Rather than responding to or even acknowledging the existence of the Local Government's evidence in the prior proceeding, Crown simply restates its general allegations against Greenwood Village – allegations that have already been debunked. Its criticisms of Greenwood Village here should be ignored.

C. Shot Clock Issues.

The existing shot clock rules are working, and there is no basis to make changes. Moreover, the existence of multiple new state laws, some of which impose shot clocks that differ from the federal rules, have been adopted in large part at the urging of the wireless industry. For example, in the Wireless Docket here, Verizon argues for a shorter, 60-day shot clock for small cell facilities.[12] Yet as the lead negotiator for the wireless industry during the passage of Colorado's House Bill 17-1193 just a few months ago, Verizon agreed that a 90-day shot clock for small cell facilities was reasonable, and that time frame was enacted into law.[13] The Commission should respect the new state laws and forego imposing new shot clocks until we see evidence that these new state laws are ineffective – particularly when these bills have been the primary result of industry advocacy.

The Commission should resist arguments to shorten shot clocks, because as time goes on, applications for small facilities siting are becoming more difficult to review. This is partially a consequence of an industry push for "batch applications" where an application is for multiple sites. As might be expected, the larger number of sites in the application, the greater the need for

[11] Local Government Reply Comments, WT Docket No. 16-421, pp. 5, 6.
[12] Verizon Comments, pp. 41, 42.
[13] HB 17-1193, codified at C.R.S. 29-27-403(1)(a) (2017).

time to adequately evaluate each site. If the Commission decides to shorten the shot clock for small cell facilities, then at a minimum, it should only permit a shorter shot clock to apply to batch applications of no more than ten sites. A batch application with more than ten sites should be afforded the time prescribed in the current shot clock.

CTIA's argument supporting a shorter shot clock for batch applications of any size is based upon a false premise. It claims that "[S]mall cell deployments are typically planned for multiple, closely-spaced, interdependent sites… typically involve identical or very similar equipment in a discrete area that can be reviewed as a group (for example, the same antenna design may be installed on ten poles of similar height along a single street)."[14] This is not necessarily true. The City of Aurora, Colorado has been approached by both Mobilitie and Verizon Wireless, seeking permission to locate small cell facilities throughout the entire city. Aurora is comprised of almost 155 square miles and has a population of approximately 350,000. Aurora has both old and new neighborhoods and a wide variety of commercial and industrial areas. It is also experiencing significant redevelopment, mixed use development, and is home to multiple new healthcare and technology campuses. The industry applicants acknowledge both the intent to file batch applications, as well as the need for different design standards for the small cell facilities depending upon the character of the particular neighborhood in which they are sited. For this reason, the City and these industry representatives have reached agreement limiting the size of batch applications to ten sites per application. CTIA has oversimplified the issue, and the real work that has been done by CTIA's members with Aurora demonstrates why this issue is best left to be addressed at the local level.

[14] Verizon Comments, pp. 16, 17.

Additionally, with respect to shot clock issues, we suggest that Crown Castle clearly has it wrong when it suggests that a shot clock should begin to run upon an applicant's "first contact" with a local siting authority.[15] As is explained below in connection with pre-application meetings in subsection D, *infra*., there are multiple kinds of "contacts" an applicant may have with a local government before an application is filed. Regardless of a shot clock's length, it should ***never*** begin to run until a complete application is actually filed with the local government.

D. The Commission Should Refrain from Addressing Pre-Application Processes.

Southern Light/Conterra Broadband demonstrates misunderstanding of basis for pre-application meetings when it suggests in its Comments that these requirements should be banned.[16] As we advocated in our Comments in the Wireless Docket, there are perfectly valid reasons for these pre-application meetings.[17] They provide an opportunity for informal discussion between prospective applicants and the local jurisdiction. Pre-application meetings serve to educate, answer questions, clarify process issues, and ultimately result in a more efficient process from application filing to final action. Moreover, pre-application meeting requirements are common land use practices for many kinds of development. These requirements are by no means unique to the broadband industry. Pre-emption of these processes would essentially set up one set of special "free pass" rules for the broadband industry, while land use applicants for numerous other types of deployment follow other the locality's regular rules. There has been ***no evidence*** demonstrating a basis for why the broadband industry should be treated differently from numerous other entities seeking land use approval.

[15] Crown Castle Comments, p. 30.
[16] Southern Light LLC/Conterra Broadband Comments, p.2.
[17] Local Government Comments, WT Docket No. 17-79, p. 14.

E. Aesthetics.

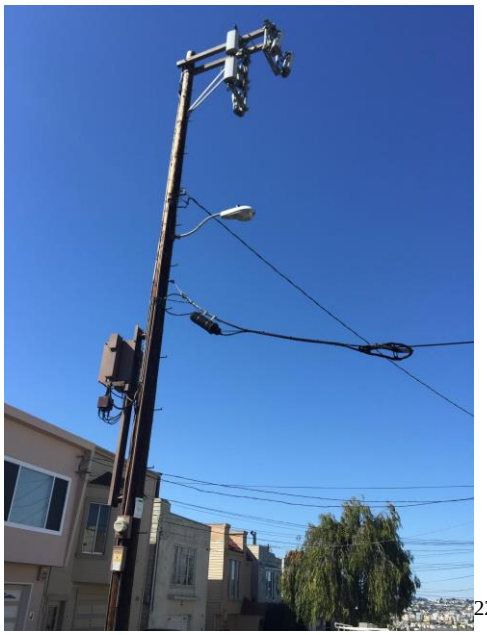
Verizon acknowledges that a local authority may deny an application aesthetic reasons, and notes that the decision should not erect a substantial barrier so long as other sites are available that do not present such concerns.[18] But suggesting that the Commission can address through a federal rule how to determine when any denial based on aesthetics would "meaningfully strain" a carrier's ability to provide service is simply not feasible. Congress clearly intended a judicial remedy for siting disputes where a local regulation prohibits or has the effect of prohibiting service. These decisions are inherently local, fact-specific determinations, and the Commission has no role substituting a federal one size fits all rule in exchange for the judicial remedy Congress determined was the appropriate method for addressing disputes over these local decisions.

Problematically, Verizon seeks a rule exempting certain small cell facilities from review by local authorities for aesthetic concerns. Specifically, it asks the Commission to hold that where a small cell meets size limits previously adopted by the Commission and is mounted on an existing structure or a similar replacement structure designed to accommodate small cells, it will ***never*** present an aesthetic concern that will justify denial of a siting application.[19] Additionally, CTIA argues that "small cells and DAS systems are designed to blend in to the streetscape with

[18] Verizon Comments, p. 16.
[19] *Id*. at p. 20 (emphasis added).

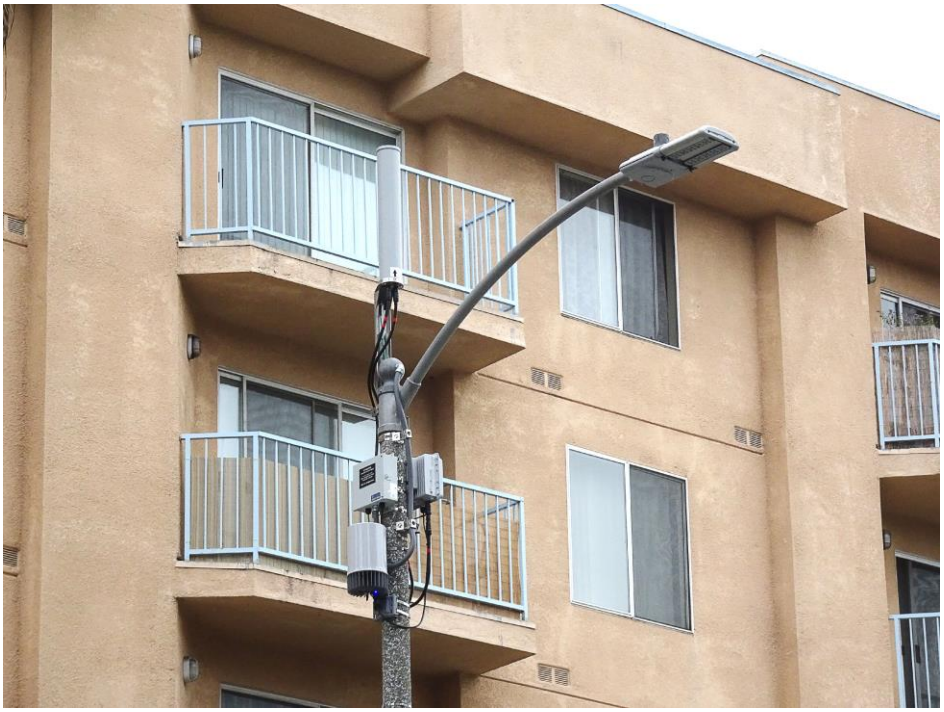
minimal is any visual impact."[20] While many small cell sites do in fact create minimal aesthetic concerns and can be made to blend in with the surrounding requirements, others that clearly fall within the Commission's definition of small cells could not be considered aesthetically acceptable in almost any setting. A few examples of small cells that clearly demonstrate the flaws in Verizon's claim that small cells will "never" present aesthetic concerns, and CTIA's claims that all small cell sites are designed to aesthetically "blend in" are as follow:

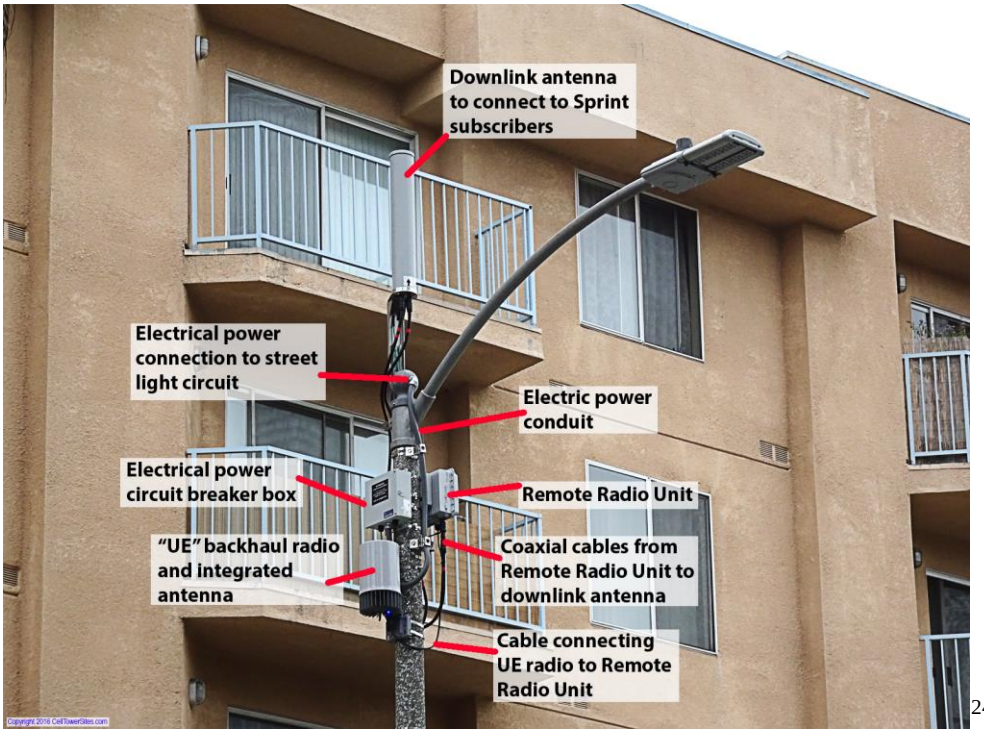
 [21]

 [22]

 [23]

[20] CTIA Comments, p. 29.
[21] Small cell site in Oakland, California. Source: Omar Masry. Provider: AT&T.
[22] Small cell site in San Francisco, California. Source: Omar Masry. Provider: Crown Castle.
[23] Small cell site in Los Angeles, California. Source: Dr. Jonathan Kramer. Provider: Mobilitie.





[24]

[24] Small cell site in Los Angeles, California. Source: Dr. Jonathan Kramer. Provider: Mobilitie.

There is no justification for exempting small cell facilities from a local jurisdiction's police power authority to address aesthetic issues.

F. Demand for 5G Technology as a Basis for Federal Preemption.

Verizon argues that "Broadband is the critical infrastructure of the 21st Century. Government action to speed deployment will unlock transformative economic and social benefits – from smart cities and access to education and healthcare to gains in productivity, sustainability, and public safety."[25] It is hard to argue with that statement and indeed, the Local Governments agree with it. The Local Governments also agree that industry action "to speed deployment" – in urban, suburban ***and rural environments*** is necessary to "unlock transformative economic and social benefits."

The Commission must know that there is very little interest today in the industry for significant investment of 5G technology in rural America. CTIA makes this clear when it argues that local governments should not be permitted to consider the need to close coverage gaps in siting decisions. "However, the concept of determining the need for coverage is anachronistic, because wireless providers are generally deploying small cells, DAS, and other small facilities to increase capacity to handle the massive growth in traffic generated by the public's exploding use of smartphones and other devices, not to expand coverage."[26]

In the past the Commission adopted shot clock rules and other rules preempting local control, with the belief that the rules would lead to additional deployment of broadband networks over an expanded coverage area. Here, the industry admits that rules are necessary to increase

[25] Verizon Comments, p. 2.
[26] CTIA Comments, p. 21.

capacity in areas with existing networks; there is no expectation about expanding coverage into areas without coverage. Before the Commission goes any further in creating more preemptory rules, it ought to consider the need for a *quid pro quo* to benefit rural America. Before the broadband industry is given new rules that force local governments to give them benefits afforded no other industry, the Commission must require a minimum increase in the investment in new networks in rural America. Otherwise, the Commission would be doing little more than promoting an expanding digital divide, generating industry profits in high density areas, while rural communities still wonder when they will see robust 2G and 3G technology.

Moreover, in proceedings of this type, the Commission is often deluged with stories of improper or unjustifiable local government delays. Reading the industry comments in these Dockets gives the impression that the vast majority of problems are caused by unreasonable local government delays, yet in reality, there are a variety of issues that cause delay and more often than not, there is no fault to be placed on any party. There is a significant disconnect between the reasons for delays alleged in these Dockets, and the delays that periodically occur in connection with siting in the real world.

Over the past few months, Verizon Wireless has been working diligently with multiple jurisdictions in Colorado on processes for siting small cell facilities. There have been times where the process has slowed due to local government issues and times where Verizon has sought more time to work on its issues. An applicant may need to circle back with its senior management team after gaining a better understanding of local concerns. Other times the process can slow down simply by key parties being unavailable due to vacation schedules. There is absolutely no criticism intended by these examples. Indeed, the undersigned and a local Verizon representative

noted the irony in these "real life" reasons for delay never being seriously considered at the Commission as a possible reason why sometimes siting does not occur as quickly as everyone would prefer. As we have noted in our Comments, in the vast majority of cases, industry and local government work effectively to site wireless facilities, and there is no need for a federal fix to a broad based national problem.

G. Pole Attachment Rules. In the Wireline Docket, the Coalition of Concerned Utilities, which includes Puget Sound Energy, an investor owned utility in Washington, also failed to follow fundamentals of due process, by alleged unnamed municipalities in Puget Sound Energy service territory" taking 4-8 weeks to process pole attachment permit applications.[27] As noted in subsection A, *supra*., the refusal to name jurisdictions and give them an opportunity to respond should cause the allegations to be ignored.

The Washington Independent Telecommunications Association (WITA) additionally complained that municipal utilities, like City of Tacoma owned "Tacoma City Light" (the correct name is actually "Tacoma Power" which is a division of "Tacoma Public Utilities"), charge a greater amount for pole attachments than the rate derived under Section 224 rules.[28] This allegation is not accurate. After review of this allegation, Tacoma Power's response to the Commission is that that it calculates its pole attachment rates based on its actual costs using the 2001 FCC Formula for telecommunications providers. That rate is $17.29 per pole attachment per year. We cannot comment on how WITA members calculate their rates other than to say that it is our understanding that each utilities' pole attachment rates will differ based on the rate

[27] Coalition of Concerned Utilities Comments, WT Docket No. 17-84, p. 25.
[28] Washington Independent Telecommunications Association Comments, WT Docket No. 17-84, pp. 3, 4.

formula it uses and the calculation of its costs.

III. CONCLUSION

The Local Governments see nothing in the Comments filed in either Docket which provides clear statutory language supporting preemption of traditional areas of state, local and/or Tribal government authority. In particular, there has been no showing of specific legal authority to insert the Commission as a decision maker in connection with land use applications, taking over the local or state role after some arbitrary period of time, and granting local permits. Nor is there authority to establish aesthetic criteria that must be followed in every community in the United States.

Even if, for the sake of argument, legal authority to preempt arguably exists, there is no evidence of a widespread national problem in connection with wireless and wireline siting applications, calling for imposition of one size fits all federal rules, to take the place of these traditional areas of local and state concern. We urge the Commission to give careful consideration to our Comments and Reply Comments in these Dockets, to the evidence in the record presented by others in the local government community, the recommendations of the Commission's Intergovernmental Advisory Committee, as described in the July 12, 2016 Report on Siting Wireless Communications Facilities[29] and as may be filed at a later date in these Dockets.

[29] https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf

Respectfully submitted this 17th day of July, 2017.

THE COLORADO COMMUNICATIONS AND UTILITY ALLIANCE, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF TACOMA AND SEATTLE, WASHINGTON, KING COUNTY, WASHINGTON, THE JERSEY ACCESS GROUP AND THE COLORADO MUNICIPAL LEAGUE

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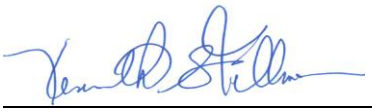
By: 

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